SHER TREMONTE LLP

MEMO ENDORSED

Government shall respond by November 30. Defendant may reply by December 7. SO ORDERED [signature] USDJ 11-4-16

November 2, 2016

VIA ECF

The Honorable P. Kevin Castel
United States District Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

USDC SDNY
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Re: *United States v. Gary Hirst*, 15 Cr. 643 (PKC)

Dear Judge Castel:

On behalf of our client, Gary Hirst, we respectfully renew our motion for a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure, and, in the alternative, move for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure.[1]

Rule 29 provides that "[i]f the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal." Fed. R. Crim. P. 29(c)(2). Under Rule 29, the critical question "is whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *United States v. Downing*, 297 F.3d 52, 56 (2d Cir. 2002) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis omitted). In this case, the government failed to introduce sufficient evidence to prove each and every element of the charged offenses beyond a reasonable doubt. The government's evidence also did not establish the elements of the charged crimes within the applicable statutes of limitations. We accordingly renew the Rule 29 motion made at the close of evidence and request that the Court enter a judgment of acquittal.

Rule 33 provides that "[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). "Generally, the trial court has broader discretion to grant a new trial under Rule 33 than to grant a motion for acquittal under Rule 29." *United States v. Ferguson*, 246 F.3d

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[1] Pursuant to Rules 29(c)(1) and 33(b)(2), the instant motions were due to be filed on October 12, 2016. On October 11, 2016, the Court granted an extension of time until November 2, 2016. ECF No. 298.

129, 134 (2d Cir. 2001). In this case, the Court's rulings on Mr. Hirst's motions *in limine* and objections, which we hereby renew, the government's improper arguments, and all the prior proceedings herein, deprived Mr. Hirst of a fair trial and undermined the reliability of the jury's verdict. Moreover, the weight of the evidence did not support the jury's verdict. *See Untied States v. Sanchez*, 969 F.2d 1409, 1413 (2d Cir. 1992). Accordingly, the Court should grant a new trial.

Respectfully submitted,

/s/

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